# DETERMINATION OF CONVENIENCE AND NECESSITY FOR ALCOHOLIC BEVERAGE OUTLETS

### **PURPOSE**

This Policy grants to the Police Department the authority to make determinations of convenience and necessity for the sale of alcoholic beverages, and provides criteria for situations when the public convenience and necessity will not be served by granting additional retail licenses for the sale of alcoholic beverages.

### **BACKGROUND**

The Business and Professions Code of the State of California, Section 23958.4 permits the City of Newport Beach under certain conditions to make a determination regarding the public convenience or necessity of granting or transferring retail licenses for the sale of alcoholic beverages.

Pursuant to this law, such determination by the City will be required by the State Department of Alcoholic Beverage Control before approving any new or upgraded license or premises-to-premises transfer of an existing license when the establishment is located in either one of the following:

- A. A census tract wherein the ratio of liquor licenses to population exceeds the average ratio of Orange County.
- B. When an establishment is located in a Newport Beach Police reporting district where crime exceeds the average of all reporting districts by 20% or more. If an applicant establishment for an off-sale beer and wine license is located within 100 feet of an adjacent Newport Beach reporting district, the crime rate of the adjacent reporting district may be considered when making this determination.

## **DEFINITIONS**

<u>Bars and Cocktail Lounges</u>. Establishments with the principal purpose to sell or serve alcoholic beverages for consumption on the premises or any establishment having any of the following characteristics:

A. Is licensed as a "public premises" by the Department of Alcoholic Beverage Control, or

B. Provides an area for serving alcoholic beverages that is operated during hours not corresponding to regular meal service hours. Food products sold or served incidentally to the sale or service of alcoholic beverages shall not be deemed as constituting regular meal service.

<u>Cabarets and nightclubs</u>. Establishments with the principal purpose of providing live entertainment and/or dancing occupying more than 20 percent of the net public area in conjunction with the serving of food and/or beverages.

Alcholic Beveral Outlet, On-Sale. "On-sale alcoholic beverage outlet" means any establishment wherein alcoholic beverages are sold, served, or given away for consumption on the premises and which is applying for or has obtained an ABC license type 40, 41, 42, 47, 48, 51, 61, 63 and/or 75.

#### **POLICY**

It is the policy of the City Council that the public convenience and necessity will not be served by the approval of any new or upgraded license or the premises-to-premises transfer of any license for bars and cocktail lounges or cabarets and nightclubs in a location that meets the following criteria.

- A. The location is within an area where the number of crimes is at least 75% higher than the average of all reporting districts in the City; and
- B. The location is within 200 feet of a property in residential use.

The provisions of this Policy shall not prevent the Chief of Police from making a determination of public convenience and necessity in the case of a premises to premises transfer of any license from (1) a location within an area where the number of crimes is at least 75% higher than the average of all reporting districts to an area where the number of crimes is less than 75% higher than the average of all reporting districts; or (2) a location within 200 feet of a property in residential use to a location more than 200 feet from a property in residential use. The provisions of this policy shall not apply to transfers that are the result or the death or incapacity of the licensee, any order of a court of competent jurisdiction, or the operation of law.

The City Council designates the Chief of Police or his/her designee to make such determination in all other cases.

The Chief of Police shall notify the Department of Alcoholic Beverage and Control and applicant of his/her determination within the time period specified by the Business and Professions Code. Any applicant not satisfied with the determination of the Chief of Police may appeal to the City Council by filing a written appeal with the City Clerk within fourteen (14) days. The City Council shall render its decision within thirty (30) days after the filing of an appeal.

The Community Development Department shall assist the Police Department in maintaining the census tract and reporting district statistics required to make such determination. Further, the Community Development Department - shall, prior to issuing any Planning or Building permit for the construction, remodeling or operation of a bar, cocktail lounge, cabaret, nightclub or retail business engaging in the sale of alcoholic beverages, first obtain a determination of convenience and necessity from the Police Department, if it is required.

The Administrative Services Department shall, prior to issuing any Business License for the operation of a bar, theater/nightclub or retail business engaging in the sale of alcoholic beverages, ensure that the applicant has obtained a determination of convenience and necessity from the Police Department consistent with the provisions of this policy and State law.

The City Clerk shall insure that this Policy, as amended, is transmitted to the appropriate official in the Department of Alcoholic Beverage Control as the notification of delegation of authority to make a determination of convenience and necessity pursuant to the California Business and Professions Code.

Adopted - May 8, 1995 Amended - February 24, 1997 Amended - April 23, 2002 Amended - September 27, 2011